

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**I.D. # 11554  
RESOLUTION E-4541  
September 13, 2012**

**R E S O L U T I O N**

Resolution E-4541: Pacific Gas and Electric (PG&E) requests authority to enter into an easement agreement.

PROPOSED OUTCOME: This Resolution adopts the findings and conclusions in the County of Santa Cruz Planning Department's Mitigated Negative Declaration pursuant to the California Environmental Quality Act and approves PG&E Advice Letter 4081-E seeking authority to enter into an easement agreement with MP Minto Associates, LP.

ESTIMATED COST: NONE

By Advice Letter 4081-E filed July 2, 2012 and  
Supplemented on July 9, 2012

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**SUMMARY**

Pacific Gas and Electric Company submitted Advice Letter (AL) 4081-E seeking approval under Public Utilities (PU) Code Section 851 to grant MP Minto Associates, LP (MP Minto) an easement agreement to install a weir, a temporary sandbag coffer dam, and a dewatering pump on PG&E property located in unincorporated Santa Cruz County, California. This Resolution adopts the findings and conclusions in the County of Santa Cruz Planning Department's Mitigated Negative Declaration (MND), pursuant to the California Environmental Quality Act (CEQA)<sup>1</sup>, and approves PG&E Advice Letter 4081-E.

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<sup>1</sup> Section 21000 et seq. of the California Public Resources Code [PRC] and the State CEQA Guidelines (Title 14, Section 15000 et seq. of the California Code of Regulations [14 CCR 15000 et seq].

## **BACKGROUND**

PG&E owns land, buildings and other facilities in connection with the provision of electric service to its customers throughout northern and central California. MP Minto has obtained permits to construct a multi-dwelling unit complex (project) in unincorporated Santa Cruz County, California, on land adjacent to PG&E property. CEQA review of the project identified several potential environmental impacts including negative impacts to nearby wetlands from increased runoff flows to County Stream 489. As part of the required mitigation plan, MP Minto will install a weir on property owned by PG&E. The weir will regulate the flow of runoff from the project to Stream 489, such that the flows at the culvert will not exceed the 5-year storm flow threshold. MP Minto will also install a temporary sandbag coffer dam and a dewatering pump to bypass any upstream flow around a culvert that will be replaced. The Advice Letter states that the installation of these facilities is necessary as mitigation to prevent downstream impacts from storm events to a downstream wetland and riparian habitat.

PG&E asserts that this easement agreement will not interfere with their ability to provide utility services and is not adverse to the public interest. Advice Letter 4081-E was appropriately filed pursuant to a pilot program to expedite certain transactions via Advice Letter that otherwise would be subject to a full PU Code section 851 application (Resolution ALJ-244). PG&E filed a supplement to the Advice Letter on July 9, 2012. The Energy Division staff suspended Advice Letter 4081-E on July 31, 2012.

The CPUC's decision to grant or deny the relief sought in AL 4081-E requires Commission review and adoption of the analysis and conclusions of the County of Santa Cruz Planning Department's Mitigated Negative Declaration, issued for public comment in February of 2008, and adopted by the County of Santa Cruz on June 10, 2008. In its review, conducted pursuant to the California Environmental Quality Act, the County acted as Lead Agency and concluded that the proposed project, and all activities associated with it, would not have any significant impact on the environment, provided that the mitigation activities proposed by MP Minto, subject to the easement agreement and outlined in AL 4081-E, are implemented. Such a review and adoption is a discretionary decision pursuant to CEQA, and the CPUC will act as a Responsible Agency for compliance with CEQA. This Resolution adopts the conclusions and findings in the County's MND, in accordance with the CEQA

Guidelines and the Public Resources Code, and approves the easement agreement between PG&E and MP Minto.

## **NOTICE**

PG&E filed Advice Letter 4081-E on July 2, 2012. In accordance with General Order 96-B, Section IV, a copy of this Advice Letter was served on the Advice Filing List, Commission staff, and the County of Santa Cruz.

## **PROTESTS**

Protests to Advice Letter 4081-E were due no later than August 9, 2012. No protests were received.

## **DISCUSSION**

CEQA requires the Commission to consider the environmental consequences of its discretionary decisions. Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA. In this instance, the Commission is the Responsible Agency under CEQA with respect to the environmental review of the MP Minto project underlying the easement agreement with PG&E. The Commission, as a Responsible Agency, must adopt the County of Santa Cruz's findings and conclusions as set out in the County's Mitigated Negative Declaration.

An Initial Study was prepared by the County of Santa Cruz Planning Department pursuant to CEQA that evaluated potential environmental impacts of the project. Potentially significant impacts to several resource areas were identified in the Initial Study; mitigation measures were developed to reduce the significance of the potential impacts; and a Mitigated Negative Declaration was prepared as the appropriate environmental document for this project. The Initial Study and MND was circulated to various governmental agencies and departments for comment during the public review period of February 27, 2008, to April 1, 2008.

The County's MND examined the project, including all associated activities and all related impacts; made findings and conclusions; and developed mitigation

measures for each potentially significant impact. Environmental protection measures to protect sensitive environmental resources were incorporated into the project and were made conditions of project approval by the County. Because these measures have been incorporated into the project's design, construction and operation, impacts to sensitive environmental resources will be avoided or minimized to less than significant levels.

Based on this evaluation, the County's MND concluded that all impacts of the project could be reduced to less-than-significant levels. On June 10, 2008, the County Board of Supervisors adopted the findings and conclusions of the MND in Resolution No. 146-2008, and found that the construction and operation of the project, as mitigated, will not create any significant adverse environmental impacts, or impacts on public health and safety.

This Commission has reviewed the County of Santa Cruz's MND as part of our consideration of whether they have complied with CEQA. Based on that review, we find that the County's MND with findings and conclusions represents our independent judgment regarding the environmental impact of the proposed project. Therefore, we will adopt the Mitigated Negative Declaration and the County's findings and conclusions for the proposed project pursuant to and in compliance with CEQA.

## **COMMENTS**

Public Utilities Code Section 311(g)(1) requires that Draft Resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Public Utilities Code section 311(g)(2) and Rule 14.6(c)(2) both provide that the 30-day comment period may be waived "...for an uncontested matter in which the decision grants the relief requested." Therefore pursuant to PU Code section 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.

## **FINDINGS**

1. The County of Santa Cruz acted as the Lead Agency pursuant to CEQA for the environmental review of the MP Minto Associates, LP proposed project.
2. The County of Santa Cruz issued an Initial Study and Mitigated Negative Declaration for thirty-days of public comment between February 27, 2008, and April 1, 2008.

3. The County of Santa Cruz's Initial Study examined the project in detail, including the portions affecting PG&E property, and all related impacts.
4. The Initial Study and Mitigated Negative Declaration concluded that all impacts of the project, including those on PG&E property, could be reduced to less-than-significant levels.
5. On June 10, 2008, the County of Santa Cruz Board of Supervisors adopted the Initial Study and Mitigated Negative Declaration for the project in Resolution No. 146-2008.
6. The County of Santa Cruz also adopted the findings, conclusions and mitigation measures contained in the Planning Department's Initial Study and Mitigated Negative Declaration, and found that the construction of the project, as mitigated, would not create any significant adverse environmental impacts, or impacts on public health and safety.
7. Pacific Gas and Electric Company submitted Advice Letter 4081-E on July 2, 2012, seeking authority pursuant to PU Code section 851 to enter into an easement agreement with MP Minto Associates, LP.
8. PG&E appropriately filed Advice Letter 4081-E pursuant to a pilot program to expedite certain transactions via Advice Letter that otherwise would be subject to a full PU Code section 851 application (Resolution ALJ-244).
9. PG&E served all required parties in accordance with General Order 96-B, Section IV.
10. PG&E filed a supplement to Advice Letter 4081-E on July 9, 2012.
11. The Energy Division suspended Advice Letter 4081-E on July 31, 2012.
12. Protests to Advice Letter 4081-E were due no later than August 9, 2012, and no protests were received.
13. This agreement would allow MP Minto to construct certain water diversion and control facilities identified as mitigation in the Santa Cruz County MND, and outlined in the easement agreement, on a portion of PG&E-owned property.
14. The CPUC's decision to grant or deny the relief sought in AL 4081-E requires Commission review and adoption of the analysis and conclusions of the Initial Study and Mitigated Negative Declaration -- including the findings, conclusions, and mitigation measures identified therein -- as adopted by the County of Santa Cruz on June 10, 2008.
15. The CPUC will act as a Responsible Agency for compliance with CEQA with respect to the environmental review of the MP Minto project underlying the easement agreement with PG&E.

16. We have reviewed and considered the County of Santa Cruz's Initial Study and Mitigated Negative Declaration prior to adopting the findings, conclusions, and mitigation measures therein.
17. We find that the findings and conclusions in the County of Santa Cruz's Initial Study and Mitigated Negative Declaration reflect our independent judgment.
18. With the implementation of the mitigation measures identified in the MND adopted on June 10, 2008, all environmental impacts are reduced to less-than-significant.
19. We conclude that the County of Santa Cruz's Initial Study and Mitigated Negative Declaration is competent, comprehensive and has been completed in compliance with CEQA and the Public Resources Code.
20. The County of Santa Cruz's Initial Study and Mitigated Negative Declaration should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.
21. Pursuant to PU Code section 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.

**THEREFORE IT IS ORDERED THAT:**

1. The County of Santa Cruz's Mitigated Negative Declaration for the MP Minto Associates, LP proposed project is adequate for the Commission's decision-making purposes and is hereby adopted pursuant to the California Environmental Quality Act Guidelines and the Public Resources Code.
2. The easement agreement presented in Advice Letter 4081-E between Pacific Gas and Electric and MP Minto to facilitate the mitigation project required to protect County Stream 489, downstream wetlands, and riparian habitat is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 13, 2012, the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director